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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

17 **IN RE TELESCOPES ANTITRUST LITIGATION**

Case No. 5:20-cv-03642-EJD

18 **THIS DOCUMENT RELATES TO:**

*Assigned for All Purposes to:  
Hon. Edward J. Davila*

19 AURORA ASTRO PRODUCTS, LLC, PIONEER  
20 CYCLING & FITNESS, LLP; and those similarly  
situated,

Plaintiffs,

21 vs.

22 CELESTRON ACQUISITION, LLC, SUZHOU  
SYNTA OPTICAL TECHNOLOGY CO., LTD.,  
23 SYNTA CANADA INT'L ENTERPRISES LTD.,  
SW TECHNOLOGY CORP., OLIVON  
24 MANUFACTURING CO. LTD., OLIVON USA,  
LLC, NANTONG SCHMIDT OPTOELECTRICAL  
TECHNOLOGY CO. LTD., NINGBO SUNNY  
25 ELECTRONIC CO., LTD., PACIFIC TELESCOPE  
CORP., COREY LEE, DAVID SHEN, SYLVIA  
26 SHEN, JACK CHEN, JEAN SHEN, JOSEPH  
LUPICA, DAVE ANDERSON, LAURENCE  
27 HUEN, and DOES 1-50,

Defendants.

**SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF CELESTRON  
ACQUISITION, LLC'S MOTION  
FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

*[Filed concurrently with Notice of Motion  
and Motion for Summary Judgment;  
Declaration of Joshua Stambaugh]*

Hearing:

Date: TBD

Time: TBD

Crtrm.: 4 (5th Floor)

Compl. Filed: June 1, 2020

Trial Setting Conf.: May 8, 2025

Case No. 5:20-cv-03642-EJD

SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS ISO CELESTRON ACQUISITION, LLC'S  
MOTION FOR SUMMARY JUDGMENT

**SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS**

Claim or Defense	Moving Party's Undisputed Facts/ Supporting Evidence	Opposing Party's Response/ Supporting Evidence
<b>Damages Period: 2005 to present</b>		
1. Dr. Zona's regression analysis is based on fatally flawed assumptions and therefore inadmissible	<p><b>Fact 1:</b> DPPs' theory of damages is based on the analysis of Dr. J. Douglas Zona, whose report is subject to Defendants' currently pending Daubert Motion.</p> <p>Sambaugh Decl. Ex. C [Zona Rpt.]</p>	
	<p><b>Fact 2:</b> Dr. Zona's "before-and-after" regression model compares telescope prices before and after the alleged conspiracy period.</p> <p>Sambaugh Decl. Ex. C [Zona Rpt. ¶¶ 101–110].</p>	
	<p><b>Fact 3:</b> DPPs define the alleged conspiracy period as beginning in 2005.</p> <p>ECF No. 495 [Fourth Am. Compl. ¶ 91]; Sambaugh Decl. Exs. E &amp; F [DPPs' Written Discovery Responses].</p>	
	<p><b>Fact 4:</b> Dr. Zona's "benchmark" period consists of prices before April 2005, while his post-conspiracy period is divided into two segments: April 2005 to August 2013 and September 2013 to 2021.</p> <p>Sambaugh Decl. Ex. C [Zona Rpt. ¶¶ 101–103, 105, 108].</p>	
	<p><b>Fact 5:</b> The goal of a "before-and-after" regression model, in theory, is to isolate the impact of alleged anticompetitive conduct by predicting what prices would have been in the absence of the alleged conspiracy and comparing the predicted prices to actual prices during the alleged conspiracy period.</p> <p>Sambaugh Decl. Ex. D [Kaplan Rpt. ¶ 123]; Ex. C [Zona Rpt. ¶¶ 101–102].</p>	
	<p><b>Fact 6:</b> Dr. Zona assumes telescope prices before 2005 were inflated due to a pre-existing conspiracy.</p>	

1		Stambaugh Decl. Ex. C [Zona Rpt. ¶¶ 84, 90]; Stambaugh Decl. Ex. A [Zona Dep. 52:5–21]; Zona Decl. ¶ 13 [ECF No 642-2].	
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4		<b>Fact 7:</b> Dr. Zona applies a 16.7% overcharge adjustment to prices before 2005 to account for his assumed pre-2005 conspiracy and uses this baseline as the foundation for his damages calculations.	
5		Stambaugh Decl. Ex. C [Zona Rpt. ¶ 98].	
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8		<b>Fact 8:</b> To justify his 16.7% overcharge, Dr. Zona claimed that “[i]n this particular case, it is very difficult to find a competitive benchmark” because “there is evidence that even before the acquisition in 2005 of Celestron by Synta, Synta and Ningbo Sunny were interrelated and not independent of one another.”	
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10		Stambaugh Decl. Ex. C [Zona Rpt. ¶¶ 84, 102]; Zona Decl. ¶ 13 [ECF No 642-2].	
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14	2. Dr. Zona’s 16.7% overcharge adjustment is derived from his assumption that Synta and Sunny’s combined market share of 40% and applying an estimated overcharge from the Connor PIC dataset	<b>Fact 9:</b> Dr. Zona’s 16.7% overcharge is based on the Connor PIC dataset which estimates a 16.7% overcharge based on two cartel members having a combined 40% market share.	
15		Stambaugh Decl. Ex. C [Zona Rpt. ¶ 98].	
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17		<b>Fact 10:</b> In his regression analysis, Dr. Zona assumes without any empirical evidence that Synta and Sunny had a combined market share of 40% before Synta acquired Celestron in 2005.	
18		Stambaugh Decl. Ex. C [Zona Rpt. ¶ 98].	
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21		<b>Fact 11:</b> Dr. Zona does not calculate damages, and DPPs do not claim any damages prior to 2005.	
22		Stambaugh Decl. Ex. C [Zona Rpt. ¶ 117].	
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25		<b>Fact 12:</b> Dr. Zona relies on the Connor PIC dataset, which purportedly estimates the typical overcharge in cartelized markets based on two key inputs: (1) the number of cartel members, and (2) the cartel’s market share.	
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1		Stambaugh Decl. Ex. A [Zona Dep. Tr.] 93:14–94:4.	
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3		<b>Fact 13:</b> Dr. Zona did not examine any telescope-specific empirical data to come up with the 16.7% overcharge figure; he instead admitted the figure was based solely on assumptions drawn from the Connor PIC dataset.	
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5		Stambaugh Decl. Ex. B [Zona Rpt. ¶¶ 95–98]; Ex. A [Zona Dep. Tr. 97:6–15, 97:21–98:3, 132:8–17, 133:14–134:19, 174:2–5].	
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7		<b>Fact 14:</b> Dr. Zona assumed a combined 40% market share for Sunny and Synta, and then mechanically applied the Connor PIC dataset’s overcharge estimate to produce the 16.7% figure.	
8		Stambaugh Decl. Ex. A [Zona Dep. Tr. 94:1–15, 104:2–12].	
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10		<b>Fact 15:</b> The Connor PIC dataset spans selected industries that include blood pressure medicine, cement and ready-mix concrete, marine construction, and industrial chemicals, but does not include the consumer telescope industry.	
11		Stambaugh Decl. Ex. A [Zona Dep. Tr. 133:14–19; 158:14–160:6]; Ex. C [Zona Rpt. ¶¶ 95–98].	
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13		<b>Fact 16:</b> Although the Connor PIC dataset itself spans hundreds of industries, Dr. Zona limited his analysis to 61 cartel industries as “yardsticks,” where two to four firms were involved and the United States was the lead jurisdiction.	
14		Stambaugh Decl. Ex. A [Zona Dep. Tr. 133:14–19; 158:14–160:6]; Stambaugh Decl. Ex. C [Zona Rpt. ¶¶ 95–98].	
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16		<b>Fact 17:</b> In his deposition, Dr. Zona testified that these industries are “comparable” based solely on the number of conspirators and the size of the market they captured.	
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1		Stambaugh Decl. Ex. A [Zona Dep. Tr. 158:18–22].	
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3		<b>Fact 18:</b> Dr. Zona admitted during his deposition that he could not recall what, if any, data, calculations, or methodology he used to arrive at this 40% market share figure, nor could he identify any source or documented support for this figure within his report.	
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5		Stambaugh Decl. Ex. A [Zona Dep. Tr. 104:2–12, 105:2–4, 108:7–112:18, 115:15–117:11, 122:16–123:4, 125:5–11].	
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7		<b>Fact 19:</b> Dr. Zona admitted that he did know not what Celestron’s, Meade’s, or JOC’s market shares were before 2005.	
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9		Stambaugh Decl. Ex. A [Zona Dep. Tr. 121:2–8, 121:14–17].	
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11		<b>Fact 20:</b> When asked about the specific market shares of leading telescope suppliers such as Meade and Celestron in the United States pre-2005, Dr. Zona conceded that he did not know their actual market shares, admitting only that he knew they were “large.”	
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13		Stambaugh Decl. Ex. A [Zona Dep. Tr. 121:2–8, 121:14–17].	
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15		<b>Fact 21:</b> Dr. Zona could not recall pre-2005 market share information for Jinghua Optical Corporation (“JOC”), another major competitor.	
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17		Stambaugh Decl. Ex. A [Zona Dep. Tr. 121:2–8, 121:14–17].	
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19		<b>Fact 22:</b> Dr. Zona did not include a personal consumption expenditure (PCE) variable in his regression analysis to measure changes in demand over time.	
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21		Stambaugh Decl. Ex. D [Kaplan Rpt. ¶¶ 8, 9, 117, 118, 121].	
22	3. Dr. Zona omitted the critical PCE demand variable to measure changes in demand over time.		
23		<b>Fact 23:</b> While Dr. Zona claims that he used “hundreds of variables” to control for such changes in demand, the six that he has identified: (i) conspiracy indicators, (ii) seasonal effects, (iii) quantity of sale, (iv) exchange rate, (v)	
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1		customer specific effects, and (vi) product-specific effects—have all been refuted by the Report by Defendants’ expert, Mr. Kaplan.	
2		Stambaugh Decl. Ex. D [Kaplan Rpt. ¶¶ 117, 118, 121].	
3		<b>Fact 24:</b> Dr. Zona’s model fails to distinguish between price changes caused by market-wide fluctuations—such as recessions, the COVID-19 pandemic, consumer trends, and production costs—and those caused by the allegedly anticompetitive conduct.	
4		Stambaugh Decl. Ex. D [Kaplan Rpt. ¶ 5].	
5	4. Dr. Zona did not use the same regression model in this case as in the <i>Orion</i> case.	<b>Fact 25:</b> Dr. Zona specifically stated that he did <i>not</i> use the same methodologies he employed in the <i>Orion</i> litigation	
6		Stambaugh Decl. Ex. A [Zona Dep. Tr. 174:2–5].	
7		<b>Fact 26:</b> In the <i>Orion</i> litigation, Dr. Zona incorporated a PCE variable to account for shifts in demand over time. In the instant case, however, Dr. Zona abandons that approach.	
8		Stambaugh Decl. Ex. A [Zona Dep. Tr. 140:24–141:4, 141:14–142:31]; Stambaugh Decl. Ex. D [Kaplan Rpt. ¶¶ 8, 9].	
9		<b>Fact 27:</b> In <i>Orion</i> , Dr. Zona used a pre-2013 benchmark for his regression analysis.	
10		Stambaugh Decl. Ex. G [Zona <i>Orion</i> Trial Tr. Vol. 1, 1976:24–1977:4]; Stambaugh Decl. Ex. H [Zona <i>Orion</i> Dep. 124:1–8].	
11		<b>Fact 28:</b> Dr. Zona similarly testified in that case there was evidence of a conspiracy before 2013.	
12		Stambaugh Decl. Ex. G [Zona <i>Orion</i> Trial Tr. Vol. 1, 1977:7–10].	
13		<b>Fact 29:</b> Dr. Zona testified that he did not “account[] for any overcharges that may have occurred before that time period.”	

1		Stambaugh Decl. Ex. H [ <i>Zona Orion</i> Dep. Tr. 125:7–8].	
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3		<b>Fact 30:</b> In his report in <i>Orion</i> , Dr. Zona even states: “In constructing a damages model, one typically compares actual economic results to those in a ‘but-for world’, which is a reference to the counterfactual situation in which the defendants did not engage in the alleged misconduct and instead pursued their next best (i.e. profit-maximizing) legal course of action. ... Damages are the difference between plaintiff’s actual economic results and those in the but-for world.”	
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5		Stambaugh Decl. Ex. I [ <i>Zona Orion</i> Report, ¶ 73].	
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11	4. DPPs fail to define the relevant market or to establish that Celestron had requisite market power to be liable under the Sherman Act §§ 1 and 2.	<b>Fact 31:</b> Meade and Celestron were aggressive competitors prior to Ningbo Sunny Electronic Co. Ltd’s acquisition of Meade in 2013.	
12		Stambaugh Decl. Ex. C [ <i>Zona Rpt.</i> ¶ 33]; Ex. A [ <i>Zona Dep. Tr.</i> at 41:2–42:8].	
13		<b>Fact 32:</b> Dr. Zona’s market definition arbitrarily excludes over 20 telescope suppliers, including manufacturers selling branded telescopes and direct imports available through major online retailers such as Amazon.	
14		Stambaugh Decl. Ex. D [Kaplan Rpt. ¶ 72].	
15		<b>Fact 33:</b> Dr. Zona uses shipping weight data instead of actual sales or revenue data to calculate market shares.	
16		Stambaugh Decl. Ex. A [ <i>Zona Dep. Tr.</i> 173:16–25, 174:1].	
17		<b>Fact 34:</b> Dr. Zona testified that his report excluded shipments where the product descriptions included telescopes alongside other products to avoid “mixing apples and oranges.”	
18		Stambaugh Decl. Ex. A [ <i>Zona Dep.</i> 172:24–25, 173:1–9.]	
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1		<b>Fact 35:</b> Dr. Zona did not analyze whether his exclusions disproportionately impacted shipments of non-defendant telescopes versus defendant telescopes, nor did he investigate whether the excluded shipments would have materially affected his market share calculations.	
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6		Stambaugh Decl. Ex. A [Zona Dep. Tr. 173:10–15].	
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8		<b>Fact 36:</b> The telescope pricing data Dr. Zona employed in his regression analysis demonstrates that telescope prices <i>declined</i> from average prices of over \$400 in 2001 to approximately \$100 in 2021.	
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10		Stambaugh Decl. Ex. D [Kaplan Rpt. ¶ 65].	
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13 DATED: March 7, 2025

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15  
16 By:

  
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